

MDR Tracking Number: M5-05-1923-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General, 133.307 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. This dispute was received on 03-10-05.

The IRO reviewed established office visits, levels I, III, IV and V, electrical stimulation-unattended, therapeutic exercises, ultrasound, biofeedback training, individual psychophysiological therapy 20-30 minutes, individual psychophysiological therapy 40-45 minutes, electrodes and exercise equipment rendered from 03-12-04 through 10-20-04 that were denied based upon "V".

The IRO determined that the established office visits, levels I, III and IV only, the unattended electrical stimulation, the ultrasound, the dispensed electrodes and exercise equipment **were** medically necessary. The IRO further determined that all remaining services and procedures **were not** medically necessary. The amount due from the carrier for the medical necessity issues equals **\$673.45**.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor did not prevail** on the **majority** of issues of medical necessity. Consequently, the requestor is not owed a refund of the paid IRO fee.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was not the only issue** to be resolved. This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On 04-06-05, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14-days of the requestor's receipt of the Notice.

CPT code 99080-73 dates of service 03-12-04, 05-05-04, 06-10-04, 08-27-04, 09-10-04 and 10-20-04 denied with denial code "V" (unnecessary treatment with peer review). Per Rule 129.5 the TWCC-73 is a required report and is not subject to an IRO review. The Medical Review Division has jurisdiction in this matter. Reimbursement is recommended in the amount of **\$90.00 (\$15.00 X 6 DOS)**.

ORDER

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for the unpaid medical fees for dates of service 03-12-04 through 10-20-04 totaling \$763.45 in accordance with the Medicare program reimbursement methodologies effective August 1, 2003 per Commission Rule 134.202(c), plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order.

This Findings and Decision and Order are hereby issued this 4th day of May 2005.

Medical Dispute Resolution Officer
Medical Review Division

Enclosure: IRO Decision

MEDICAL REVIEW OF TEXAS

[IRO #5259]

3402 Vanshire Drive

Austin, Texas 78738

Phone: 512-402-1400

FAX: 512-402-1012

NOTICE OF INDEPENDENT REVIEW DETERMINATION

TWCC Case Number:	
MDR Tracking Number:	M5-05-1923-01
Name of Patient:	
Name of URA/Payer:	Neuromuscular Institute of Texas
Name of Provider: (ER, Hospital, or Other Facility)	Neuromuscular Institute of Texas
Name of Physician: (Treating or Requesting)	Daniel B. Burdin, DC

April 19, 2005

An independent review of the above-referenced case has been completed by a chiropractic doctor. The appropriateness of setting and medical necessity of proposed or rendered services is determined by the application of medical screening criteria published by Texas Medical Foundation, or by the application of medical screening criteria and protocols formally established by practicing physicians. All available clinical information, the medical necessity guidelines and the special circumstances of said case was considered in making the determination.

The independent review determination and reasons for the determination, including the clinical basis for the determination, is as follows:

See Attached Physician Determination

Medical Review of Texas (MRT) hereby certifies that the reviewing physician is on Texas Workers' Compensation Commission Approved Doctor List (ADL). Additionally, said physician has certified that no known conflicts of interest exist between him and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for determination prior to referral to MRT.

Sincerely,

Michael S. Lifshen, MD
Medical Director

cc: Texas Workers Compensation Commission

CLINICAL HISTORY

Documents Reviewed Included the Following:

1. Notification of IRO Assignment, Table of Disputed Services, and Carrier EOBs
2. Position statement of treating doctor, dated Position statement of treating doctor, dated 4/11/05

3. Treating doctor's initial evaluation and narrative, dated 11/29/00
4. Treating doctor's office notes, 3/10/03 through 2/1/05
5. TWCC-73s
6. Daily Treatment Logs, 3/18/04 through 4/28/04; and, 3/18/03 through 9/4/03
7. EMG/NCV report, dated 3/3/03 and 6/1/04
8. Pain management specialist office notes, dated 3/3/03 through 6/1/04
9. IRO and Corvel authorizations
10. Psychosocial evaluations and progress notes, dated 4/14/03 through 10/29/03
11. Narrative notes from neurologist/behavior neurologist, dated 7/15/04, 7/29/04, 8/27/04, 9/20/04, 10/7/04
12. Biofeedback progress notes, 6/4/04, 6/11/04, 6/24/04
13. Progress notes from orthopedic surgeon, dated 9/12/03, 1/16/04, 3/2/04, 4/16/04, 6/15/04
14. Orthopedic second opinion note, dated 8/31/04
15. Peer review, dated 11/20/00
16. Medical record review, dated 5/20/04 with addendum, dated 7/6/04

Patient is a 52-year-old pre-kindergarten teacher assistant who, on ____, was performing some cafeteria duties when she slipped on the floor and fell, injuring her lower back, left knee and left elbow. She sustained a second on-the-job slip and fall on ____ that aggravated her lower back condition. Despite a trial of conservative chiropractic care, including physical therapy, rehabilitation, and epidural steroid injections, she eventually underwent lumbar decompression, discectomy, fusion and spinal instrumentation at L4-5 on 11/6/02; then, on 1/7/04, she underwent a second surgical procedure that included removal of the hardware, fusion exploration and decompression of the right L5 nerve root, followed by post-surgical therapy and rehabilitation.

REQUESTED SERVICE(S)

Established patient office visits, levels I, III, IV and V (99211, 99213, 99214 and 99215), electrical stimulation, unattended (G0283), therapeutic exercises (97110), ultrasound (97035), biofeedback

training (90901), individual psychophysiological therapy, 20-30 minutes (90875), individual psychophysiological therapy, 40-45 minutes (90876), electrodes (A4556), and exercise equipment (A9300) for dates of service 03/12/04 through 10/20/04.

DECISION

The established patient office visits, levels I, III and IV *only* (99211, 99213 and 99214), the unattended electrical stimulation (G0283), the ultrasound (97035), and the dispensed electrodes (A4556) and exercise equipment (A9300) are all approved. All remaining services and procedures are denied.

RATIONALE/BASIS FOR DECISION

Because this patient was status post-surgical hardware removal, it was both reasonable and necessary that she receive periodic evaluations by the treating doctor (99213 and 99214), treatment with post-surgical modalities (G0238 and 97035), and durable medical equipment (A4556 and A9300) for in home use.

However, in terms of the medical necessity of the biofeedback sessions (90901), the efficacy of this treatment remains unproven.¹ In fact, the Philadelphia Panel Evidence-Based Clinical Practice Guidelines for Chronic Pain was unable to make a recommendation due to "insufficient clinical information on the effectiveness" of biofeedback treatment of neck pain.² Therefore, this treatment was not supported as medically necessary.

Insofar as the psychophysiological therapies (90875 and 90876) were concerned, these treatments had already been tried as extensive one-on-one counseling the year before from April 2003 through October 2000, and yet failed. This failure is further demonstrated by the fact that the patient had another surgery in November of 2003. It was unreasonable, then, to continue with a treatment that had already been documented as unsuccessful.

Regarding the established office visit, level V, on date of service 8/27/04, nothing in either the diagnosis or the medical records

¹ Milliman Care Guidelines, *Ambulatory Care* 8th Edition. Copyright © 1996, 1997, 1999, 2001, 2002 Milliman USA, Inc.

² Philadelphia Panel evidence-based clinical practice guidelines on selected rehabilitation interventions for neck pain. *Physical Therapy* 2001;81(10):1701-17.

supported the medical necessity of performing this high level of an Evaluation and Management (E/M) service on this patient, per CPT³.

And finally, with respect to the therapeutic exercises (97110), this patient's injury was already nearly four years old when the post-operative therapy in dispute in this case was initiated. During her nearly four years of treatment, she received *extensive* physical therapy and rehabilitation. It is therefore reasonable to assume – particularly absent any documentation to the contrary – that this patient would have been capable of performing these exercises in a home based program. In other words, there was no evidence to support the need for continued monitored therapy, and the treating doctor failed to establish why the services were still required to be performed one-on-one at that point in her care, particularly when current medical literature states, "...there is no strong evidence for the effectiveness of supervised training as compared to home exercises."⁴ In fact, any gains obtained in this time period would have likely been achieved through performance of a home program.

³ *CPT 2004: Physician's Current Procedural Terminology, Fourth Edition, Revised.* (American Medical Association, Chicago, IL 1999),

⁴ Ostelo RW, de Vet HC, Waddell G, Kerchhoffs MR, Leffers P, van Tulder M, Rehabilitation following first-time lumbar disc surgery: a systematic review within the framework of the cochrane collaboration. *Spine.* 2003 Feb 1;28(3):209-18.